

STATE LANDS COMMISSION

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August 29, 1996

File Ref.: W 25334

Mr. Marc Luesebrink
Resources Agency
1416 Ninth Street, Ste 1311
Sacramento, CA 95814

Dear Mr. Luesebrink:

Attached for your information is a Calendar Item which was approved by the State Lands Commission at its meeting on August 21, 1996. As you will see, the Commission authorized staff to enter into Memorandums of Agreement, substantially in the form attached to the Calendar Item, which would allow Reclamation Districts to conduct dredging to obtain materials for levee maintenance under specified conditions. We are hopeful that this authorization will enable Commission staff to expedite requests for project approval, and at the same time, reduce application processing costs.

I would like to offer my personal thanks to all of you who have inspired and helped to develop this new process. Please feel free to call me at (916) 574-1940 if you have any questions, or if you would like to discuss entering into a Memorandum of Agreement with the Commission.

Sincerely,

Jane Sekelsky
Chief, Land Management Division

cc: Robert C. Hight
Executive Officer

CALENDAR ITEM

C45

A 8, 9, 10, 11, 15, 17, 26

S 4, 5, 6, 7, 12

08/21/96

W 25334

J. Sekelsky

MEMORANDUM OF AGREEMENT (MOA)

PARTIES: California State Lands Commission
Reclamation Districts

LAND USE: Dredging of materials from State owned sovereign lands for use in levee maintenance.

LAND LOCATION:

State owned beds of tidal and navigable waterways in the Sacramento-San Joaquin Delta.

PROPOSED TERMS OF MOA:

1. Authorizes dredging of materials from State owned sovereign lands for use in levee maintenance if the following criteria are met:
 - a. The project is authorized by United States Army Corps of Engineers General Permit 14, dated December 26, 1995;
 - b. The project is not necessitated by a proposed or contemplated change in use of the uplands protected by the subject levee; and
 - c. The project will not result in a waterward extension of the levee.
2. No royalty will be charged for the dredged materials, as the projects are being conducted by public agencies (Reclamation Districts) and generate a public benefit (flood protection).
3. The Reclamation District which is sponsoring the project will indemnify and hold harmless the State for any and all liability arising out of or connected to implementation of the projects authorized under the MOA.
4. The MOA will be without prejudice to any disagreement which may exist between the Reclamation District and the State as to location of the boundary between their respective lands.

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OTHER PERTINENT INFORMATION:

1. For approximately four years, Commission staff have participated as members of the Delta Levees and Habitat Advisory Committee established by the California Resources Agency. This Committee includes representatives from state and federal agencies, as well as private land owners, reclamation districts, and their consultants. One of the goals of this group has been to establish an expedited permit process to enable reclamation districts to conduct dredging for levee maintenance in a timely manner. Because of overlapping agency jurisdictions and numerous constraints associated with the presence of threatened and endangered species in Delta waterways, it has become very costly and time consuming for reclamation districts to acquire the necessary permits to conduct routine levee work to assure the continuing integrity of their levees.

The United States Army Corps of Engineers has developed General Permit 14 (GP 14), which allows dredging associated with routine levee maintenance so long as that activity does not adversely impact any threatened or endangered species and so long as the activity meets specified water quality standards. The applicability of GP 14 to levee dredging projects is limited, but it does allow certain projects to move forward without being reviewed by numerous federal agencies as part of a lengthy project specific application process. Other state agencies have agreed to employ GP 14 to expedite their permitting processes to the extent possible.

Because GP 14 affords protection against adverse impacts to riparian, fisheries or wildlife habitat, especially threatened and endangered species which inhabit the State's sovereign lands, and assures that water quality standards will be met, and because dredging projects associated with routine levee maintenance generally do not have other adverse environmental impacts to the State's lands, Commission staff recommends that the Commission adopt a standard form MOA, substantially in the form, attached hereto as Exhibit A, to be used by staff to authorize these projects. It is contemplated that each interested reclamation board would enter into an MOA with the Commission on the pre-approved form. Staff will be given fifteen days to review all proposed

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projects to determine whether they conform to the terms of the MOA. If they do, the project proponent may implement the project under their MOA. If the project does not conform to the terms of the MOA, staff will notify the proponent that they must submit an application for separate Commission consideration.

This concept has been presented to the Delta Levee and Habitat Advisory Committee and has been enthusiastically received by other agencies and private landowners.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061(b)(3), staff has determined that the proposed MOA would authorize only those projects which would have no potential to cause a significant adverse impact on the environment, and so is exempt from the requirements of CEQA.
3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code Sections 6370, et seq. Based upon staff's review of the identified values, it is staff's opinion that the approval of the MOA, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Proposed Form of Memorandum of Agreement

AB 884:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

FIND THAT THIS ACTIVITY IS EXEMPT FROM CEQA PURSUANT TO 14 CAL. CODE REGS. 15061(b)(3) BECAUSE IT HAS NO POTENTIAL FOR CAUSING A SIGNIFICANT EFFECT ON THE ENVIRONMENT.

CALENDAR ITEM NO. C45 (CONT'D)

SIGNIFICANT LANDS INVENTORY:

FIND THAT THE ACTIVITY IS CONSISTENT WITH THE USE
CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO PUBLIC
RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE STAFF TO EXECUTE MEMORANDUMS OF AGREEMENT
SUBSTANTIALLY IN THE FORM ATTACHED HERETO AS EXHIBIT A, TO
AUTHORIZE RECLAMATION DISTRICTS TO CONDUCT DREDGING OF
MATERIALS FROM STATE OWNED SOVEREIGN LANDS FOR USE IN
ROUTINE LEVEE MAINTENANCE UNDER PRESCRIBED CONDITIONS.

EXHIBIT A

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is made by and between the California State Lands Commission ("Commission") and Reclamation District Number _____ ("District"), and is effective upon execution by both parties.

Recitals

- A. The Commission has jurisdiction and control over State owned sovereign lands, including, but not limited to, the beds of certain tidal and navigable waterways in the Sacramento-San Joaquin River Delta. Commission authorization is necessary for certain activities to be conducted on those lands, including, but not limited to, dredging to extract materials from the beds of those State owned waterways.
- B. The District has jurisdiction and control over levees surrounding (island) and wishes to conduct dredging in the bed of the (waterway) to extract materials for use in maintenance of those levees.
- C. Certain dredging activities conducted by the District will have no significant adverse impacts on the environment and will therefore qualify for federal authorization under United States Army Corps of Engineers General Permit 14, dated December 26, 1995 ("General Permit 14").
- D. Because the times during which District dredging activities may be conducted without risk of adverse environmental impacts are severely limited, and because levee conditions may necessitate prompt response, the parties wish to establish a process whereby Commission approval of such activities in the Sacramento-San Joaquin River Delta can be expedited.

Now, Therefore, The Commission and the District Agree as Follows.

- 1. Commission hereby authorizes District to conduct dredging activities in the bed of (waterway) to obtain materials for use in levee maintenance, so long as Commission staff determines that such dredging activities meet the following criteria:
 - a. The District, the California Department of Fish and Game or the United States Army Corps of Engineers has provided written evidence that the proposed dredging is permitted under General Permit 14;
 - b. The District has certified in writing that the project is not necessitated or motivated by a proposed or contemplated change in use of the uplands protected by the subject levee; and

- c. The District has submitted detailed plans for the proposed dredging, and has certified that the project will not result in a waterward extension of the subject levee.
2. No less than fifteen (15) days prior to proposed commencement of dredging, District agrees to notify Commission staff of their intent to conduct such dredging, and to provide Commission staff with the certifications and detailed plans cited in Paragraph 1, above. Commission staff will notify District no later than three (3) days prior to the proposed commencement date of dredging if the proposed project is not covered by this Agreement and if further Commission action is necessary.
 3. Consideration: The dredging authorized by this Agreement will have a public benefit, and no monetary consideration or royalty will be charged for dredged materials extracted from the State's lands pursuant to this Agreement.
 4. District agrees to provide the Commission copies of any other government authorizations for the dredging activities and any project monitoring reports prepared for other governmental agencies.
 4. District agrees to indemnify and hold harmless the State of California, acting by and through the Commission, for any and all liability arising out of or connected to dredging authorized by this Agreement.
 5. This Agreement is without prejudice to any disagreement between the District and the Commission as to the location of the boundary between their respective lands.
 6. The activities authorized by this Agreement may be conducted only if and when the District has obtained all necessary permits and entitlements, and for so long as District complies with all rules, regulations, statutes or ordinances of any governmental agency or entity having lawful authority and jurisdiction over those activities.
 7. The term of this Agreement is forty-nine years from the effective date hereof, or until General Permit 14 expires or is amended, whichever is shorter.
 8. This Agreement may be amended by mutual agreement as evidenced by a writing signed by both parties.

(Reclamation District)

(Date)

Executive Officer
State Lands Commission

(Date)

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